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SUBJECT: Applying Geographic Preferences in Procurements for the Child Nutrition Programs - Updates

TO: Child Nutrition Programs

This memorandum updates and revises Memoranda SP 30-2008 *Applying Geographic Preferences in Procurements for the Child Nutrition Programs*, SP 08-2009 *Procurement Questions*, and SP 28-2009 *Procurement Questions*, regarding school food authorities' (SFAs) and other institutions' application of a geographic preference in procurements for the Child Nutrition Programs. Section 4302 of the Food, Conservation, and Energy Act of 2008, P.L. 110-246 (Farm Bill), amended section 9(j) of the Richard B. Russell National School Lunch Act (NSLA), 42 USC 1758(j), directing the Secretary of Agriculture to encourage institutions operating the Child Nutrition Programs to purchase unprocessed locally grown and locally raised agricultural products. In addition, the Farm Bill allows SFAs and other institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring those unprocessed agricultural products.

As provided in the Joint Explanatory Statement of the Committee of Conference, the Managers used the term "unprocessed" to preclude the use of geographic preference for agricultural products that have significant value added components. The Managers do not intend to preclude *de minimis* handling and preparation such as might be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton. (H.Rpt. 100-627)

In the above-referenced memorandum and question and answer communications, we provided initial guidance on the term "unprocessed" as it relates to the use of geographic preferences in procurements by SFAs and other service institutions, stating the *de minimis* handling and preparation anticipated by the Managers would not include chopped, cut, or diced products. As a result, we concluded that "geographic preference may not be applied to agricultural products that have been chopped, cut, sliced, or diced."

However, after observing the impact of the interpretation of unprocessed during the past year we have determined that our initial guidance is unnecessarily restrictive and potentially prevents SFAs and service institutions from procuring unprocessed, locally grown products in a usable form. Accordingly, we are updating our initial guidance. Unprocessed agricultural products that have been chopped, cut, sliced, diced or shucked do meet the parameters of unprocessed as used in the Farm Bill. Therefore, SFAs and other service institutions may use a geographic preference when procuring those agricultural products. The relevant memorandum and question and answer communications will be revised accordingly and re-issued.

It is important to note that the Farm Bill does not permit the use of geographic preferences in SFAs and other service institutions' procurement of agricultural products that have significant value added components. We will issue a proposed regulation early in Fiscal Year 2010 on the geographic preference provision.